

## **REMARKS/ARGUMENTS**

Claims 1-21 are pending in the present application. Claims 1, 3, 4, 6-10, 12, 13, 15-17, 19 and 20 have been amended herewith. Reconsideration of the pending claims is respectfully requested.

### **I. 35 U.S.C. § 101**

Claims 17-21 stand rejected under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

Claim 17 has been amended to recite a computer readable medium encoded with a computer program product and operable with a data processing system, as specifically allowed for per the requirements of MPEP 706.03(a) and 2106. See, in particular, MPEP 2106(IV)(B)(1)(a) where it states:

“A claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.”

Accordingly, as Claim 17 expressly recites a computer readable medium encoded with a computer program product and operable in a data processing system for translating system events for system management, it is shown that Claim 17 (and similarly for Claims 18-21) is directed to statutory subject matter, pursuant to both judicial case law and the USPTO's own MPEP rules.

Still further, Claim 17 explicitly recites a computer readable medium encoded with a computer program product and operable in a data processing system for translating system events for system management, which is either a ‘manufacture’ or a ‘composition of matter’, both of which are statutorily recognized subject matter<sup>1</sup>. In addition, since Claim 17 explicitly recites a computer readable medium encoded with a computer program product and operable in a data processing system, such claim does *not* fall within one of the three judicially determined exceptions of: natural phenomenon, law of nature or abstract idea (see, e.g., MPEP 2106 and in particular MPEP 2106(IV)(B) and (C)), but instead is limited

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<sup>1</sup> 35 U.S.C. 101 Inventions patentable.

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

to a practical application in the technological arts<sup>2</sup>. Thus, it is further shown that Claim 17 has been erroneously rejected under 35 U.S.C. § 101 as the invention recited therein does not fall within a judicial exception but instead is limited to a practical application in the technological arts.

The Examiner notes concern that the claimed computer-readable medium may encompass transmission-type media, which the Examiner asserts to be non-statutory *without providing any legal basis*, either pursuant to the MPEP, statutory law, or judicial precedent. Appellants respectfully submit that both *In re Lowry, Id.* and the MPEP explicitly state that computer-readable medium encoded with a data structure is statutory – without any type of transmission-media exception as now alleged by the Examiner to be the current state of the law. Because it is permissible to claim information embodied in a storage medium (*In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995)), it is worth noting that the "difference between information storage and information communication is fundamentally only a difference in one's inertial frame of reference." Michael P. Frank, "The Physical Limits of Computing," *Computing in Science & Engineering*, May/June 2002, at 24.

The Examiner states that non-statutory media such as transmission media are incapable of being touched or perceived absent the statutory medium through which they are conveyed. While this statement is a bit self-serving, as it implies non-statutory media are non-statutory and statutory medium are statutory (which by definition must be true), what is clearly erroneous in the ‘being touched or perceived’ implications of this statement. Applicants respectfully submit that even if Claim 17 covers transmission media, the Examiner is incorrect in the allegation that such waves and media are incapable of being perceived. Carrier waves and signal or transmission media are clearly perceivable, able to be precisely identified, and are capable of being appraised. Computer readable media must be inherently “perceivable”, otherwise they would not be “computer readable”. In other words, carrier waves and signal or transmission media are measurable, readable, or usable by appropriate devices for measuring, reading or using such waves and media. Since these types of media are perceivable, then the present claims are in fact directed to statutory subject matter. The following four cases conclusively establish judicial precedent that electrical signals – such as transmission-type media - are physical, and statutory under 35 U.S.C. § 101.

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<sup>2</sup> *Only when* the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. § 101. Compare *Musgrave*, 431 F.2d at 893, 167 USPQ at 289; *In re Foster*, 438 F.2d 1011, 1013, 169 USPQ 99, 101 (CCPA 1971).

In *AT & T Corp. v. Excel Communications Inc.*, 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999), the CAFC stated at one point about electrical signals being physical:

The *Arrhythmia* court reasoned that the method claims qualified as statutory subject matter by noting that the steps **transformed physical, electrical signals from one form into another.**

Turning to *Arrhythmia Research Technology Inc. v. Corazonix Corp.*, 958 F.2d 1053, 22 USPQ2d 1033 (Fed. Cir. 1992), the CAFC wrote about electrical signals being physical:

These claimed steps of "converting", "applying", "determining", and "comparing" are physical process steps that transform one physical, electrical signal into another. **The view that "there is nothing necessarily physical about 'signals' is incorrect**, citing *In re Taner*, 681 F.2d 787 (CAFC 1982) (emphasis added by Appellants).

Turning to *In re Taner*, Id., where the PTO was fighting an appeal of a rejection of the PTO Board of Appeals of a claim for a signal, the CCPA (the predecessor court to the CAFC) wrote:

Though the [PTO] board conceded that appellants' process includes conversion of seismic signals into a different form, it took the position that "there is nothing necessarily physical about 'signals'" and that "the end product of [appellants' invention] is a mathematical result in the form of a pure number." That characterization is contrary to the views expressed by this court in *In re Sherwood*, 613 F.2d 809 (CCPA 1980) and *In re Johnson*, 589 F.2d 1020 (CCPA 1978), **where signals were viewed as physical and the processes were viewed as transforming them to a different state.** ... and in *Sherwood* expressly recognized that **"seismic traces are ... physical apparitions."** 613 F.2d at 819. That those "physical apparitions" may be expressed in mathematical terms is in our view irrelevant (emphasis added by Appellants).

The last case is the Supreme Court decision *O'Reilly v. Morse* from 1853 (56 U.S. 62), in which the Supreme Court upheld the following product claim for signals:

1. I claim as my invention the system of signs consisting of dots spaces and of dots, spaces and horizontal lines for numerals, letters, words or sentences substantially as herein set forth and illustrated for telegraph purposes.

So, across decades of judicial decisions, we have the CAFC and the Federal Circuit repeatedly stating that electrical signals are physical, backed up by the Supreme Court. Being physical, such signals are tangible articles. Since such signals can be manufactured according to numerous varieties of technological methods, such signals are articles of manufacture or composition of matter, both of which are statutory categories of patentability under 35 U.S.C. § 101. Thus, Claim 17 is shown to be statutory under 35 U.S.C. § 101 as it explicitly recites a computer readable medium encoded with a computer program product and operable in a data processing system for translating system events for system management, pursuant to both (extensive) judicial case law and the USPTO's own MPEP rules. Accordingly, Claim 17 (and dependent Claims 18-21) have been erroneously rejected under 35 U.S.C. § 101.

Therefore, the rejection of Claims 17-21 under 35 U.S.C. § 101 has been overcome.

## **II. 35 U.S.C. § 102, Anticipation**

Claims 1-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by MacGregor (U.S. Publication No. 2005/0102382). This rejection is respectfully traversed.

With respect to Claim 1, Applicants have amended such claim to include the features previously recited in Claim 4. As amended, Claim 1 recites “wherein the event is translated by the gateway into a plurality of different event management system formats and the plurality of translated events are correlated at remote system management data processing systems to determine whether system management events should be performed”. As can be seen, the event that is received at the gateway is translated to a plurality of different event management system formats. In rejecting Claim 4, whose features are now a part of amended Claim 1, the Examiner states that MacGregor teaches such multi-format translation at page 2, paragraph 0023 in that ‘stored event data are formatted for different audiences’. Applicants urge error, as this cited passage describes a prior art technique – and not MacGregor’s instant message system – for formatting and presenting network and service level information. Not only is this prior art reporting system not the improved MacGregor system, but more importantly the formatting that is described in this cited paragraph is with respect to *reports*, and not with respect to *events*. For example, as stated by MacGregor at this same paragraph 0023:

“[0023] Another feature, a ‘decision support system,’ integrates with the data warehouse to format and present network and service level information, as well as analyzed and correlated data, to operators and clients of the network infrastructure. This information is presented and reported for the purpose of resource allocation, troubleshooting and network health decision-making. *The reports are generated from stored data and are formatted for a given audience (e.g., operations, engineering, and management).*”

As can be seen, per this MacGregor cited passage, reports are generated from stored data, and these reports are formatted for a given audience. In contrast, per Claim 1 “the *event is translated by the gateway into a plurality of different event management system formats* and the plurality of translated events are correlated at remote system management data processing systems to determine whether system management events should be performed”. While the MacGregor report may include information pertaining to events, it is the *report* – and not an *event* itself that is received at a gateway, as claimed – that is formatted into a plurality of different formats. Thus, as every element recited in amended Claim 1 is not identically shown in a single reference, it is urged that amended Claim 1 is not anticipated by the cited reference.

Applicants initially traverse the rejection of Claims 2-6 and 8 for reasons given above with respect to Claim 1 (of which Claims 2-6 and 8 depend upon).

Further with respect to Claim 3, Applicants have amended such claim to emphasize that the event that is translated to the plurality of different formats is in a *neutral* event format notwithstanding that the event was received at the gateway in a *native* event management form, as described in the Specification at page 15, lines 14-27, which advantageously allows for translating to a neutral format conducive for processing by the gateway and a subsequent translation into a format conducive for processing by the plurality of different event management systems. The cited reference does not teach or otherwise contemplate such two-staged format translation. Thus, it is further urged that Claim 3 is not anticipated by the cited reference.

Further with respect to Claim 4, such claim has been amended to emphasize the central configuration file being located in the gateway which is used in conjunction with a plurality of plug-in modules to perform the translations, thereby advantageously allowing for centralized processing with associated less-complex system management due to such centralized processing. In contrast, the cited reference teaches a distributed cell network, where a plurality of distinct software cells located in or in close proximity to end devices provide a formatting of data for such devices prior to the data being injected into the network (MacGregor page 2, paragraph 0027; Figure 2, elements 81, 83 and 89). Thus, it is further urged that Claim 4 is not anticipated by the cited reference.

With respect to Claim 7, Applicants have amended such claim to be in independent form, and such claim now includes all features originally recited in independent Claim 1. In addition, Claim 7 has been amended to clarify that there are two distinct translating steps with respect to the event, and two different resulting formats as a result of these two distinct translating steps. For example, Claim 7 now recites “translating the event from the native event management form to a vendor neutral form; translating the event into a vendor specific form, which is different from the vendor neutral form, for use by the remote event management system; and forwarding the vendor specific form of the event to the remote event management system”. As can be seen, there is a translation of the event into a vendor neutral form *as well as* a translation into a vendor specific form. In rejecting Claim 7, the Examiner states that MacGregor teaches all the features of originally filed dependent Claim 7 (which originally included ‘translating’, ‘translating’, and ‘forwarding’ steps) at MacGregor page 1, paragraph 0008, page 2, paragraph 0023 and the forwarding of events to server 55 of Figure 2. Applicants urge error, as the MacGregor cited passage at page 1, paragraph 0008 - which is alleged to teach two different types of translating steps - actually only describes a *single* type of translation. This can be seen by a close inspection of this cited passage, where MacGregor states (at page 1, paragraph 0008):

“[0008] The present invention utilizes an instant messaging system for providing a network management capability to acquire, cache, transfer, store, analyze, correlate and display network management information from diverse network components. The network management information is acquired by means of a network cell provided near each monitored network element. *The network cell provides for either manual or automatic control of a selected network element, and converts the management protocols of the network element into a single format that is integrated into an instant messaging data bus.* Network management events from disparate and diverse network entities are sent to one or more instant messaging ‘group chat’ environments to facilitate the consolidation, processing and correlation of network events.”

As can be seen, per this MacGregor cited passage, a network cell converts different types of management protocols into a single format. This is so that this single format can be used within the framework of an existing, standard instant messaging system. There is no teaching or suggest of two different translating steps with respect to a single event, with each translating step translating into a format different than the format of the other translating step. It is believed that the amendments to Claim 7 have further clarified this distinction, and thus it is urged that amended Claim 7 is not anticipated by the cited reference.

With respect to Claim 9-16 Applicants initially traverse for similar reasons to those given above with respect to Claim 1.

Applicants further traverse the rejection of Claim 12 for similar reasons to the further reasons given above with respect to Claim 3.

Applicants further traverse the rejection of Claim 13 for similar reasons to the further reasons given above with respect to Claim 4.

With respect to Claim 17 (and dependent Claims 18-21), Applicants traverse the rejection of such claim for similar reasons to those given below with respect to Claim 7.

Applicants further traverse the rejection of Claim 19 for similar reasons to the further reasons given above with respect to Claim 3.

Applicants further traverse the rejection of Claim 20 for similar reasons to the further reasons given above with respect to Claim 4.

Therefore, the rejection of Claims 1-21 under 35 U.S.C. § 102(e) has been overcome.

### **III. Conclusion**

It is respectfully urged that the subject application is patentable over the cited reference and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 18, 2007

Respectfully submitted,

/Wayne P. Bailey/\_\_\_\_\_

Wayne P. Bailey  
Reg. No. 34,289  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Attorney for Applicants